IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FAMILY COURT APPEAL NO.66 OF 2003

Sneha Atmaram Naik .. Appellant
(Orig. Respondent)

Versus

Atmaram Shridhar Naik .. Respondent
(Orig. Petitioner)

Mr. Deepak Trivedi for the Appellant.
Mr. P.G. Lad i/b. Shri Jadhav for the Respondent

CORAM : S.B. MHASE,
& S.R. SATHE, JJ.
DATED : 23/07/2007

ORAL JUDGEMENT :- (PER S.R. SATHE,J.)

1. Appellant-wife, the original Respondent in Marriage Petition No.1896 of 1997 has preferred this appeal against the decree for divorce passed against her by the Family Court No.3, Mumbai.

2. Brief facts giving rise to this appeal are as under :-

Marriage of Atmaram Naik, original Petitioner took place with Sneha Naik, original Respondent on 28/05/1996. (Both of them are hereafter referred as Petitioner and Respondent respectively). It was their arranged marriage. At the time of marriage, Petitioner was residing at Andheri alongwith his aged mother and two unmarried sisters. After marriage, Respondent

started residing with Petitioner. At that time, both of them were gainfully employed. Petitioner was serving in Indian Oil while Respondent was serving in MTNL. After the marriage was settled, the Respondent told the Petitioner that he transferred her entire balance in the saving bank account in the name of his father. According to the Petitioner this found him to be rather strange. When they had gone to Ooti for Honeymoon, Petitioner suggested that Respondent should wear saree. On that Respondent told him that if she would have come to know that he would be asking her to do so she would not have married with him. On the day of marriage, at night the mother of Respondent had epilepsy attack. When Petitioner should concern about the same, the Respondent told him that he need not bother about the same, and it was usual drama of her mother. Such utterance of the Respondent found to be very strange and shocking to the Petitioner.

3. It is the Petitioner's case that since the time Respondent started residing in the matrimonial home, she started saying that she and Petitioner should reside separately and the aged mother and two unmarried sister of Petitioner should not live in the said house. Petitioner tried to convince her as to how it is

necessary for them to stay together as he was the only son of his mother and it was his moral duty to look after her and take care of the sister also. Petitioner's one sister was in fact working in Bharat Petroleum. In the month of 'Ashad' Respondent went to her maiden home for few days. After returning to matrimonial home, she started behaving more aggrasively and started again insisting for separating from him mother and sister. On that count, Respondent-wife started shouting and created a scene. In spite of all this, Petitioner was trying to pacify her and convince her but it was in vain.

4. In August-1996 Respondent told the Petitioner that she is pregnant. Naturally, Respondent was very happy throughout the day. However, two days thereafter, Respondent told him that she had told him accordingly jocularly. Petitioner therefore got annoyed and told her that she should not take such things lightly. However, thereafter couple of months, on 05/10/1996 Petitioner came to know that Respondent is pregnant. Petitioner's mother and his sisters were also happy to learn the said news. On 11/10/1996, mother and sisters of Petitioner had gone to attend a obsequies ceremony of Petitioner's grand mother at Borivali. Petitioner

and Respondent were alone in the house. Even at that time Respondent-wife started insisting that Petitioner should start residing separately and when Petitioner told her that she should not open that unpleasant topic again and again, she started making hue and cry.

5. On 22/10/1996, Respondent had some gynecological problem. Petitioner requested her to go to Doctor but initially she refused. However, after persuasion, she agreed and Petitioner took her to their family doctor and then to Dr. Adatia. Doctor adviced abortion. The Petitioner, therefore, immediately informed to the mother of the Respondent. However, her mother expressed inability to attend the hospital. By that time, Dr. Adatia told the Petitioner that child in the womb of respondent has expired and it is necessary to carry out surgery immediately. Hence, abortion took place. However, thereafter, Respondent refused to accompany the Petitioner to matrimonial home. It is the Petitioner's case that on the day of operation when in the evening he went to the hospital, he noticed that Respondent had already left with her brother to her maiden home. The Petitioner therefore contacted the Respondent on telephone and Respondent abused him and blamed him for the abortion which was required to be

undergone by the Respondent. She said that he is the killer of the child. Such allegations made by the Respondent caused great mental agony to the Petitioner. Though Petitioner requested the Respondent to avail leave and take rest, she started attending duties under the excuse of training classes.

6. It is Petitioner's case that time and again he requested the Respondent to come to matrimonial home but she did not come. On 16/11/1996 Respondent went to matrimonial home and took her ornaments and clothes and returned. Even thereafter, Petitioner requested her to return to matrimonial home but every time, she refused by saying that the Petitioner should start residing separately. Not only that but she also gave threat to Petitioner that if he would insist for her return, she would file complaint of dowry and harassment against him and his family members.

7. It is the Petitioner's case that on 25/11/1996 he received phone call from Respondent's father informing him that there is another child in the womb of Respondent. The Petitioner, therefore, contacted Doctor Adatia and he confirmed the said fact. The Petitioner took second opinion of Dr. Neela Joshi. Both

the doctors expressed apprehension that delivery may not be normal and the child will also be not normal. Considering gravity of the problem and after discussing the topic with the Respondent, both of them decided that Respondent should undergo abortion. However, subsequently, Respondent changed her decision and started treatment from Dr. Purandare.

8. It is the Petitioner's case that on 07/01/1997 Respondent's father and brother came to the office of the Petitioner and proposed to hold a meeting for putting an end to the marrital tie between Petitioner and Respondent. Petitioner was shocked to learn such proposal and he asked them to send Respondent back. He also requested the Respondent on telephone to return to Matrimonial Home. But she flatly told Petitioner that she would not return unless Petitioner starts residing separately. It is his case that on 04/05/1997, Respondent came to his house alongwith his sister and took away her remaining ornaments including 'mangalsutra'. On 21/05/1997, Respondent gave birth to a female child. Petitioner and his family members therefore immediately went to the hospital to see to the newly born baby. Petitioner also distributed sweets in his office. On 29/06/1997, Respondent and her

parents fixed a day for naming ceremony. However, as the said day was not convenient to Petitioner, he suggested that some other day should be fixed. However, Respondent and her family members refused and said that naming ceremony is took place even in his absence and if he and his family members would fail to attend the same complaint will be lodged against them. The Petitioner, therefore went to attend naming ceremony. It is the case of Petitioner that on that day at night Respondent threatened the Petitioner that she would file a complaint against him for torture and dowry and would teach a lesson to him and his mother and sister. Even, thereafter, on 07/08/1997 meeting was arranged in the house of matrimonial uncle. But even at that time, Respondent used abusive language against mother and sister of Petitioner. With a view to harass the Petitioner and to malign his image and reputation and with a view to bring pressure on him on 07/07/1997 Respondent went to petitioner's office and used abusive language against him. Similar scene was also made by her at the office on 17/10/1997. Petitioner's friend Aniruddha Shetye tried to intervene and to bring conciliation. However, the said efforts were also proved to be futile. They had a meeting at Shivaji Park on 04/11/1997. Even at that time in the presence of

Aniruddha Shetye, Respondent insisted that she would not return to matrimonial home unless Petitioner starts residing separately. It is the Petitioner's case that behavior and conduct of the Respondent caused great mental torture and harassment to him. Her conduct also damaged his reputation and dignity. Hence, on 05/11/1997, Plaintiff filed Petition, seeking divorce on the ground of cruelty as mentioned in Section-13(1) (ia) of the Hindu Marriage Act, 1956 (hereafter called as the said Act).

9. The Respondent-wife filed her Written Statement at Exh-18 and admitted her marriage with Petitioner and the fact that on 21/05/1997, she gave birth to female child. She, however, contended that at the time of marriage gold ornaments were given by way of dowry. However, the Petitioner and his family members were not satisfied with the same and hence, even after marriage they were insisting that the father of Respondent should give 5 grams gold which was given less in the marriage. It is her case that she was being ill-treated by the Petitioner and his mother and sisters. Even on flimsy ground they used to harass her. She was also not given proper food and they in fact wanted to drive her out of the matrimonial home.

10. The Respondent also contended that she was not at all ready for the abortion but her husband insisted for the same. Even at the second time, the Petitioner-husband was insisting for abortion but she refused. She admitted that on 07/10/1997 she had been to the matrimonial home and she took some ornaments but according to her, at that time, there was marriage of her near relative and hence for that purpose, she had brought some ornaments from her matrimonial home. She also contended that as the Petitioner was not available on telephone and whenever she used to contact petitioner, he was avoiding to speak, she went to the office of the Petitioner to request him to take her to matrimonial home. She denied the allegation that she used abusive language against him or made any scene and caused damage to his reputation. She contended that as there was harassment to her she in fact made a complaint to State Women Commission and they had sent a notice to the Petitioner. Hence, on all these grounds she contended that petitioner's allegation that she caused mental cruelty to the petitioner is not true and prayed for the dismissal of the Petition.

11. On 28/07/1999, the Respondent-wife filed

Petition for restitution of conjugal rights under section 9 of Hindu Marriage Act against her husband i.e. Petitioner wherein she submitted that her husband has withdrawn himself from her society without any justifiable cause. She made similar allegations in the Petition and prayed that decree for restitution of conjugal rights be passed against the husband. The husband opposed the said Petition by raising contentions alleged in his earlier marriage Petition No.1896/97. On the pleadings of the parties in the above mentioned two marriage petitions the Judge, Family Court No.3, Mumbai framed issues. Both the parties led common evidence in the above mentioned Petitions. Petitioner-husband examined himself at Exh-28 and examined other two witnesses namely Mr.Aniruddha Shetye and Mr. Rane. As against this, the Respondent-wife examined herself at Exh-63 and her maternal uncle at Exh-67. After considering the oral and documentary evidence adduced by both the parties, learned Family Court Judge came to the conclusion that though, the Respondent-wife actually lived for a very short period in the matrimonial home, her conduct during that period as well as even her conduct subsequent to the time that she left the matrimonial home and residing at maiden home, caused mental cruelty as contemplated by section

13(1)(ia) of the said Act, to the Petitioner-husband and Petition filed by the Respondent-wife for restitution of conjugal rights is in fact not bonafide and therefore, passed decree for divorce in favour of Petitioner-husband and directed him to pay maintenance Rs. 1,500/- per month for the minor child.

12. Being aggrieved by the above mentioned judgement and order the Respondent-wife has filed the present appeal. In this appeal before us, Shri Deepak Trivedi, learned Advocate for the wife has urged two points. Firstly, he submitted that the learned Trial Judge has not properly appreciated the evidence on record and without there being any evidence to prove allegations made by them Petitioner-husband the trial court came to the conclusion that the conduct of Respondent-wife was amounting to cruelty. Secondly, he canvassed before us that Respondent-wife was in fact driven out of the house or at least she was constrained to leave the house of the Petitioner and the Petitioner-husband and his family members had in fact no intention to maintain the marital relations between Petitioner and Respondent. Lastly, the learned Advocate submitted that Respondent-wife had in fact initially filed complaint against her husband with State Women

Commission and made grievance about the conduct of her husband. He, therefore, submitted that appeal be allowed and decree for divorce passed against wife be set aside. As against this, Shri Lad learned Advocate for the Petitioner-husband supported the judgement and order passed by the Judge, Family Court, Mumbai.

13. It is not in dispute that marriage of Petitioner and Respondent took place on 28/05/1996. It was arranged marriage. It is also not in dispute that out of the said wedlock the couple has a female child who is named as Roshana and she is presently residing with the Respondent-wife. It is also admitted that when their marriage took place Petitioner's aged mother and two unmarried sisters were residing with the Petitioner. From the allegations made in the Petition it is also very clear that the Respondent-wife actually stayed in the matrimonial home hardly for a period of about 5 months. Naturally, one feels that as to during this short tenure what happen which compelled the Petitioner to file a Petition for divorce on the ground of cruelty.

14. From the averments in the Petition, it is very clear that Petitioner-husband is seeking divorce on the

ground of mental cruelty. It is true that legal conception of cruelty and the kind of degree of cruelty necessary to amount to a matrimonial offence has not been defined in section-13 of the said Act. However, there are various authoritative pronouncements in which the Apex Court has laid down as to what cruelty means. In a case **V. Bhagat V/s. Mrs. D. Bhagat AIR 1994 SUPREME COURT 710** wherein the Apex Court has observed that :-

> *"Mental cruelty in Section 13(1)(ia) can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such a nature that the parties can not reasonably be expected to live together."*

15. It is also well settled that whether particular conduct or behavior amounts to cruelty or not can only be determined by keeping in view the physical and mental condition of the parties, their age, environment, standard of culture and status in life. Hence, acts which may amount to cruelty in one case may

not be sufficient to fulfill the requisite test in another case. So, bearing in mind, the above principles, let us scan the evidence on record to find out whether the conduct of Respondent-wife amounted to cruelty as contemplated under section 13(1)(ia) of the said Act.

16. At the outset, it must be mentioned that Petitioner and Respondent are not ignorant persons. They are coming from middle class family. Even at the time of marriage both of them were gainfully employed. Both of them were residing at Mumbai. The Petitioner has stated that after his marriage was settled with Respondent she told him that she transferred her cash balance in her account to her father and the Petitioner thought it unusual. However, it must be noted that afterall it was her money and she might have thought it fit to transfer the same to her father who might have incurred lot of expenditure for her bringing up. So, there was in fact nothing wrong on the part of Respondent and Petitioner should not have any expectations of the Respondent's money which she had earned earlier. However, merely because he said that the said behavior appeared to him unusual that by itself is not sufficient to judge his subsequent

conduct.

17. The Petitioner has stated that when they had gone to Honeymoon and he asked Respondent to wear saree, she told him that if she had come to know that he would be asking her to wear saree, she would not have married with him. One does not know with what seriousness she had uttered such words. There is also nothing on record to show that there was any subsequent quarrel between them on the said issue. So, no much importance can be given to the said fact.

18. The main and the material grievance of the Petitioner is that since the time the Respondent came to matrimonial home she started insisting that the Petitioner should live separately and not with his aged mother and two unmarried sisters. It has also come on record that Petitioner is the only son of his mother. So, under such circumstances, Petitioner was fully justified in saying that it was his moral duty to look after his aged mother and unmarried sisters and as such, it was necessary for him to live with them and it was not possible to afford two separate accommodations. The Petitioner has stated that on this ground the Respondent often used to shout at him and pick up

quarrel and all along she was insisting that the Petitioner should reside separately. If wife starts insisting husband like this and tries to bring pressure on him it is bound to cause mental agony to him. That would certainly cause great harassment and torture to him, which is bound to disturb his mental piece and day to day life. If we carefully consider all the conduct of the Respondent-wife then it would indicate that the Respondent has in fact really no desire to live with the Petitioner, so long as Petitioner was not ready to reside separately. So, such adamant attitude of the Respondent-wife was certainly not proper and it had caused mental cruelty to the Petitioner.

19. It is pertinent to note that Petitioner has stated that when he came to know that the Respondent is pregnant all his family members were happy. But, unfortunately in the month of October-1996 Respondent was required to undergo operation for abortion and thereafter she never returned to matrimonial home. Though, the Respondent has tried to show that she was in fact not willing to undergo abortion operation the Petitioner insisted for the same, we find that the contention raised by the Respondent in this behalf is totally false. Evidence on record in fact goes to show

that Petitioner had taken every care of the Respondent. Initially, he took her to family doctor and then to gynecologist. The Respondent has also admitted that gynecologist adviced her to undergo operation. So, when such was the position, it can not be said that Petitioner was insisting for the abortion. Even then, the Respondent blamed Petitioner for the same. He has stated that on that count Respondent even called him 'killer of the child'. Naturally, such serious allegation caused mental harassment to the Petitioner.

20. It is evident from the record that even after the time when second time Petitioner was informed that there is second child in the womb of the Respondent, he immediately contacted the gynecologist and also took second opinion of Dr. Neela Joshi and as both these doctors expressed apprehension about the survival and normal delivery, the Petitioner had suggested that the Respondent should undergo abortion operation. So, merely because petitioner suggested accordingly, it can not be said that the Petitioner had any ill motive in suggesting abortion at that time. On the contrary, we find that when the Respondent-wife gave birth to female child, all the family members were happy. It has also come on record that Petitioner thereafter went to the

hospital to see newly born baby. Respondent has also admitted that petitioner had come to see the newly born baby. But according to her at that time Petitioner did not even touch the child and did not look at her. For this there is no other corroborative evidence. On the contrary, it is established from the evidence on record that after the birth of female child, Petitioner had even distributed sweets in his office. So, under such circumstances, we are not inclined to believe Respondent's contention that when Petitioner had gone to the hospital he had even not looked at the newly born child. From the preponderance of probabilities the Respondent's contention in this behalf appears to be incorrect.

21. The Petitioner has stated on oath that time and again he had contacted the Respondent when she was residing at her maiden home and requested her to come to matrimonial home. However, every time, Respondent told that she would not come unless Petitioner starts residing separately. In our considered view such adamant view and behavior of the Respondent-wife certainly amounted to cruelty, particularly when there was noting on record to establish that Respondent-wife was any way ill-treated or harassed by her mother-in-

law and sister-in-laws.

22. It is tried to be suggested by the Respondent-wife that the members of the Petitioner's family were not satisfied with the dowry or ornaments that were given to them at the time of marriage and on that count they were asking the Respondent to bring additional gold. It is interesting to note that even according to the Respondent, Petitioner was asking only 5 gms. Not only that but she had also submitted that when her father had gone to Petitioner with such gold the Petitioner had in fact refused to accept the same. So, this itself falsifies the Respondent's contention in this behalf. What is more to be noted is that if really Petitioner or his family members had harassed her and ill-treated her, then certainly immediately after the time the Respondent left matrimonial home and went to maiden home, she would have issued notice to the Respondent. But that has not happened. On the contrary, we find that she continued to reside in the maiden home and in fact deprived the Petitioner of her company. It is pertinent to note that the Respondent-wife had in fact no any grievance against the Petitioner. So, one thing is certain that Petitioner's conduct with Respondent was good and there was no reason for the

Respondent to make any grievance against the Petitioner. It is worth to note that even in her Written Statement the Petitioner has stated that

> *"Respondent (wife) states that the Petitioner (husband) always behaved with love and affection in the absence of his parents but in the presence of his parents, he always behaved in a very abnormal manner which used to hurt respondent".*

However, it must be noted that Respondent has not pointed out even a single instance of alleged abnormal behavior. So, this admission of the Respondent-wife itself is sufficient to show that there was no fault on the part of the Petitioner and there was no justifiable ground for the Respondent to leave matrimonial home and insist that the Petitioner should reside separately from his mother and sisters.

23. The Petitioner has stated that on 07/10/1997 as well as on 11/10/1997 the Respondent had come to his office and there she used abusive language against him and his family members in presence of others and that ridiculed him and affected his image and prestige. This statement of Petitioner is also supported by his witness Aniruddha Shetye. It is true that Aniruddha

Shetye is a close friend of the Petitioner. However, it is very clear even from the evidence of Respondent that he had made efforts for conciliation between Petitioner and Respondent. Not only that but even on 04/11/1997 also they had met at Shivaji Park in order to find out whether there can be conciliation. In spite of this Respondent had made an attempt to show that Aniruddha Shetye was totally stranger to her and she was not knowing much about him. However, from evidence it is revealed that Respondent had even accompanied the family of Aniruddha Shetye when they had gone for some outing. The learned Trial Judge has therefore observed that it is in fact not safe to rely on the testimony of the Respondent. The Trial Court has therefore raised suspicion about the Respondent's credibility. The evidence of Aniruddha Shetye is not at all shaken or shattered in the cross-examination. There is nothing to indicate that he has deliberately spoken against respondent. So, we have no hesitation to hold that there was no justifiable reason for the Respondent to go to the office of her husband and behave in a manner which would shatter image and dignity of her husband. Such type of conduct of a wife is bound to cause great mental harassment to the husband. So, such conduct certainly amounts to cruelty as contemplated under

section 13(1)(ia) of the said Act.

24. It is worth to note that Respondent was not only trying to harass the Petitioner and to bring pressure on him but she had even gone to the length of giving threats to him that she would file a false case against him for dowry and ill-treatment and involve Petitioner and his family members in the said case. In fact, we do find that finally she made a complaint application to State Women Commission and managed to see that police constable in uniform goes to the office of the Petitioner to serve him the notice which also disturbed Petitioner. It is pertinent to note that though the application which is submitted by the Respondent to State Women Commission appears to be prior to the filing of the Petition, admittedly, information about the same is received by the Petitioner after filing of his Marriage Petition. Naturally, immediately on receipt of such notice Petitioner gave proper reply to the said application and informed the Commission that he has already filed Divorce Petition. Not only that he also appeared before commission as and when called. If really the said application of the Respondent would have been made prior to the filing of the Petitioner's Marriage

Petition then normally, she would have disclosed about the same to Petitioner and Aniruddha Shetye when they had met her on 04/11/1997 at Shivaji Park. But that has not happened. So, that also indicates that the Respondent was concealing certain things from the Petitioner and she had in fact no desire to go and reside with the Petitioner.

25. It is evident from the record that even after the marriage with Petitioner, Respondent continued her maiden name in the office. Not only that but even while obtaining telephone connection and opening account in bank she opened it in her maiden name. It is true that now a days many married women continue with their earlier name or continue the earlier surname alongwith the surname of the husband. Be that as it may, the fact remains that as Respondent-wife continued her old name and opened a bank account also in the maiden name, it indicates that she had no genuine desire to get herself identified as wife of Petitioner. So, such conduct of wife is bound to cause great annoyance as well as mental torture to any husband. What is more to be noted is that though in one breath Respondent was trying to say that the Petitioner and his family members ill-treated and harassed her and as a result of the same,

she was constrained to leave the matrimonial home and even to file complaint before State Women Commission, at the same time, she has filed a Petition for restitution of conjugal rights against the Petitioner. Of course, it is very clear that the said Petition is filed two years after the husband filed Petition for divorce. So, considering all these aspects the learned Trial Judge rightly observed that the said Petition for restitution of conjugal rights is in fact not genuine and it is filed only to give some counter blast or to show that the Respondent in fact wanted to continue to live in the house of the Petitioner.

26. In view of the above discussion, we are of the considered view that the Petitioner has sufficiently proved that the conduct of the Respondent was amounting to cruelty as contemplated by section 13 (1)(ia) of Hindu Marriage Act. The decree for divorce passed by the learned Trial Judge is unassailable. Hence, we pass the following order :-

O R D E R

The appeal is dismissed.

Under the circumstances of the case parties to bear their own costs of this appeal.

(S.R. SATHE, J.) ***(S.B. MHASE, J.)***